

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARHSINGLE BENCH: HON'BLE SHRI S.R. NAYAK, C.J.WRIT PETITION NO.6243 OF 2005PETITIONER
PLAINTIFF

Bhushanlal Rathore, S/o Late
Ramratan Rathore Aged about 62
years, R/o H. No. 21/460, Ramsagar
Para Ward Raipur

Vs.

RESPONDENTS
DEFENDANTS

1. Rampyari Rathore Wd./o Late
Ramkishan, Age Not Known R/o
Jawahar Nagar Ward Rathore-Chowk
Raipur
2. Jitendra Kumar Rathore, Age About
34 Yrs.
3. Mukesh Rathore, Age About 28 Yrs.
2&3 are S/o Late Ramkishan Rathore
4. Roopchand Rathore S/o Late
Ramratan Rathore, Age Ab. 64 yr
5. Dillip Rathore, S/o Roopchand Rathore
Age Ab. 32 Yr.
2 to 5 are R/o Near Prabhat Talkies,
Raipur (C.G.)

Present: Mr. Raja Sharma, learned counsel for the petitioner.
Ms. Madhu Modi, learned counsel for the respondents.

ORAL ORDER(Passed on 12th January, 2006)

The petitioner is the plaintiff. The case was set out before the trial Judge on 18/10/2005 for plaintiffs evidence. On 18/10/2005 the petitioner/plaintiff himself appeared before the trial Court in person and moved an application (Annexure-P/4) for adjournment on the ground that he was suffering from viral fever and he was not in a position to give evidence. Learned trial Judge refused the adjournment and closed the evidence of the plaintiff on the ground that the petitioner/plaintiff had

already secured three adjournments and no further adjournments could be granted in terms of the proviso to order 17 Rule 1 of the CPC. The order of the learned trial Judge does not reflect the law correctly as laid down by the Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India¹. The Supreme Court in that case has opined that more than three adjournments may be granted in case it could be shown that the circumstances are beyond the control of a party and whether more than three adjournment should be granted or not would depend on facts and circumstances of each case.

(2) In the instant case, the fact that the petitioner/plaintiff was suffering from viral fever on 18/10/2005, is not seriously contested. Even the learned trial Judge, as could be seen from the impugned order, did not disbelieve what is stated in the application. Therefore, I am satisfied that the petitioner/plaintiff for a reason beyond his control could not step into the witness box and give evidence on 18/10/2005. The learned trial Judge is not justified in closing the evidence of the plaintiff. In the result, I allow the writ petition and set aside the order of the learned trial Judge impugned in the writ petition and allow the application (Annexure-P/4) as prayed for. No costs.

Sd/-
Chief Justice

1. AIR 2005 SC 3353